

EXHIBIT 8

**REDACTED VERSION
OF DOCUMENT
SOUGHT TO BE SEALED**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

Case No.

UBER TECHNOLOGIES, INC.;

3:17-cv-00939-WHA

OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

_____ /

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED 30(b)(6) DEPOSITION OF MATHEW HENLEY

FRIDAY, DECEMBER 22, 2017

Reported by:

Anrae Wimberley

CSR No. 7778

Job No. 2771361A

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1 A. Three. We can limit it to three. You're
2 correct, it's three.

10:44:29

3 On December 19th at 10:45 in the morning,
4 I get this alert from LinkedIn telling me that Jeff,
5 who is in this room, is viewing my profile. Right.
6 This tells me a lot. Right. This is -- it's not
7 unexpected, but it's -- please let me finish --

10:44:40

8 Q. No, I mean --

9 A. You asked me to explain what the documents
10 are, and I'm going to explain what the documents
11 are.

10:44:56

12 Q. Okay. I'm going to withdraw the question
13 again. Okay.

14 MR. LYONS: Let's go off the record, Counsel.

15 BY MR. LYONS:

10:45:02

16 Q. You can tell me what this is, but this is
17 not --

18 A. I'm trying to tell you what this is.

19 MR. UMHOFFER: Hang on. Time out. Let's just
20 go off the record and take one step at a time.

10:45:06

21 THE VIDEOGRAPHER: Going off the record at
22 10:45 a.m.

23 (Discussion off the record.)

24 THE VIDEOGRAPHER: Back on the record at

25 10:57 a.m.

10:57:33

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1 MR. LYONS: So I believe the witness has come 10:57:34
2 with multiple copies of a three-page exhibit that he
3 would like to explain. Counsel and I have had a
4 conversation off the record. So I think we're going
5 to proceed in this fashion. 10:57:47

6 BY MR. LYONS:

7 Q. Mr. Henley, you have a three-page exhibit
8 here. Why don't you tell me what your purpose in
9 bringing this exhibit was today.

10 A. Yes. 10:57:57

11 MR. LYONS: And we'll just mark this next in
12 order.

13 (Plaintiff's Exhibit 9777 was marked.)

14 THE WITNESS: So my only reason for bringing
15 this today was -- these are often foreign concepts 10:58:17
16 as to why people use what are being termed as
17 "non-attributable devices" and why we use things
18 like MiFis and AWS.

19 So over the past couple weeks, these are
20 things that show up in my inbox that give me notice. 10:58:37
21 And I'm by no means saying this is wrong, but it's
22 just to relate to something that you guys will
23 understand so I'm hoping that you will then take
24 this to understand why we do it.

25 So I don't know who Jeff is. I do now, 10:58:54

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1 but, you know . . .

10:58:58

2 And, Jeff, I sent you a LinkedIn request
3 you didn't accept, after you viewed it.

4 MR. NARDINELLI: I don't think I got that
5 e-mail. I'm not very talented with LinkedIn.

10:59:06

6 THE WITNESS: But it gives context around that
7 Jeff is looking at my stuff. And then on my
8 personal website, there's triggers that will fire
9 off links here. And what these two are, it shows
10 that the Quinn office is poking around on my
11 personal website on December 20th at 11:28.

10:59:21

12 And, you know, very open records here. If
13 I check out -- that IP on the third page with Arin
14 shows that, in fact, the IP does belong to your law
15 firm.

10:59:37

16 So these are the things -- if you could
17 put this in the concept of the SSG team and dealing
18 with a hostile group, let's say, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 They use a separate laptop so that they
24 don't -- they avoid what happened to Jeff here.
25 Like Jeff using LinkedIn for his personal stuff is

11:00:06

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1 not something we want to cross over into his work 11:00:10
2 stuff, which was preparing for my deposition.

3 The same thing goes for the IP addresses.
4 We don't want them showing that the IP addresses are
5 coming from an Uber office. We want it coming from 11:00:25
6 a MiFi, which is -- blends in with a bunch of other
7 people.

8 So it's just a document that I wanted you
9 guys to use for context in helping you understand
10 something that I know as lawyers isn't something 11:00:33
11 that's normal, but it's something very normal in the
12 security industry.

13 BY MR. LYONS:

14 Q. What would be very helpful for me now is
15 to make sure I understand the nomenclature of the 11:00:42
16 concepts that you've described. Because I think you
17 understand the concepts and, for some reason, we
18 have not been able to get past the nomenclature.

19 So on page 3, you have a record here that
20 apparently you believe shows you some information. 11:01:03

21 So what information are you telling me is
22 demonstrated by what is on page 3?

23 A. On page 3 of my document?

24 Q. Yes.

25 A. So page 3, it is referencing the IP 11:01:16

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1 address on the previous page. And I'm asking Arin, 11:01:21

2 A-r-i-n -- not Aaron at the end of the table, he

3 wouldn't have any clue on this stuff -- who owns

4 that IP address. Arin replies that Quinn Emanuel

5 owns that IP address, which gives me the indications 11:01:39

6 that Quinn is looking at it.

7 The way this is used in an offensive

8 manner by people we are looking at is -- you could

9 imagine if I know that you guys aren't careful with

10 this stuff and you start looking at mine, maybe I 11:01:59

11 show you a different website, right, and I don't

12 show you what it is because I don't want you looking

13 at it.

14 And this is why obfuscation is important.

15 Again, if you were researching someone that had 11:02:09

16 violent tendencies, I'm sure you wouldn't want your

17 attorneys being called out specifically who is doing

18 it.

19 Q. Again, I appreciate that. I don't know

20 that we're here today to discuss the reasons why 11:02:21

21 things were done the way that they were done, but I

22 understand that you felt the need to clarify that.

23 I think I'm more interested in finding out what

24 actually was done. And I think one way to get that

25 would be to make certain that I understand the 11:02:34

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1 Q. What was the purpose of utilizing chat 11:09:55
2 products?

3 A. Communication.

4 Q. List for me the reasons that you
5 recommended Wickr Messenger over other chat 11:10:12
6 products.

7 A. Wickr Messenger provided end-to-end
8 encryption. It provided both desktop and mobile
9 versions. It provided ephemerality, and it provided
10 group conversations. 11:10:38

11 Q. Were there any other advantages to Wickr
12 Messenger over other chat products that you
13 identified?

14 A. Those were the main components that I was
15 looking at when evaluating my personal preference 11:10:49
16 around chat products.

17 Q. Did you share these features as -- strike
18 that.

19 In suggesting that other people utilize
20 Wickr Messenger, did you inform them of these 11:11:04
21 benefits that you identified?

22 A. I don't remember, but I'm sure that I
23 would have had those discussions.

24 Q. With regard to ephemerality, do you recall
25 having any conversations with anyone at Uber at any 11:11:16

1 Did you ever have any conversations with 12:48:57
2 Mr. Sullivan about this topic?

3 A. We told him about the situation. And Joe
4 sending this back to Craig and I -- and this is me
5 speculating, but this is how we read an e-mail like 12:49:12
6 from Joe, is to let us know that he has made Anthony
7 aware of the situation.

8 Q. You see at the bottom of the e-mail,
9 there's a reference -- there's a statement that
10 says, "Because it was prepared for/by legal, this is 12:49:24
11 privileged."

12 Do you see that?

13 A. I do.

14 MS. CHANG: Objection; outside the scope of the
15 30(b)(6) topics for which this witness has been 12:49:32
16 designated.

17 Are you done with the 30(b)(6)?

18 MR. LYONS: No. I will come back to this
19 exhibit if you want. I promise you I won't forget
20 about it. To make life easier, I thought I'd get to 12:49:42
21 it now.

22 MS. CHANG: Okay.

23 BY MR. LYONS:

24 Q. So we're going to come back to this topic.
25 Let me just ask you: Do you recall 12:49:53

1 receiving any instructions at any time by anyone to 12:49:55
2 put that type of notation at the bottom of any
3 e-mail?

4 A. Specifically, "Because it was prepared
5 for/by legal, this is privileged"? 12:50:06

6 Q. Not specifically those words, but that
7 concept.

8 A. You know, if it was something I was
9 working on for our legal department, generally that
10 would be something I would -- I would -- I would 12:50:20
11 send. But, again, I'm not a lawyer and it was
12 more -- yeah, I don't know. If it was something
13 that was specifically done at the direction of a
14 lawyer, I would note it as --

15 Q. My question was simply, do you recall 12:50:43
16 receiving any instructions by anyone to put that
17 type of notation at the bottom of any e-mail?

18 A. Not the way you just answer -- or asked
19 that question.

20 Q. Okay. Was it your practice to put that 12:50:57
21 notation at the bottom of your e-mails, that --
22 where you did something for a lawyer?

23 A. If I was working on work product for a
24 lawyer, then it would be designated as such.

25 Q. That was your practice; is that what 12:51:23

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1 parties have in place relating to litigation holds 13:06:15
2 and ephemeral messaging.

3 MR. LYONS: Okay.

4 THE WITNESS: My conversation was that this was
5 making the company less secure and putting us more 13:06:26
6 at risk by pushing this policy.

7 BY MR. LYONS:

8 Q. Was that your position?

9 A. That was my position.

10 Q. Did anybody have a similar position or 13:06:41
11 express a similar view in that meeting?

12 A. Yes.

13 Q. Who?

14 A. Joe Sullivan.

15 Q. Did Mr. Clark express any views? 13:06:50

16 A. Yes.

17 Q. What did he say?

18 A. He had the same position.

19 Q. And what were the reasons that you felt
20 that this was making the company less secure? 13:06:59

21 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13:07:20

1

■

■

And

4 now you were forcing us to go back to that again due
5 to what I believe are optics.

13:07:42

6 Q. Was there any discussion about not
7 complying with this policy?

8 A. Not complying?

9 Q. Yes.

10 A. No.

13:07:50

11 Q. Now, after the policy went into effect,
12 what communications do you recall having about this
13 policy?

14 A. I would say they were very similar. My
15 continued ranting that this made Uber a worse place
16 from a risk perspective in the context of security
17 of our employees, drivers and riders.

13:08:00

18 MR. LYONS: Mark this as our next in order.

19 (Plaintiff's Exhibit 9786 was marked.)

20 BY MR. LYONS:

13:09:16

21 Q. This is an e-mail from Nick Gicinto to
22 several people; Anna Chung, Ed Russo, Jake Nocon,
23 Jimmy Stelter, Julie Ambrose, Randy Wanis and
24 Shawnee Delaney.

25 Do you see that?

13:09:30

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1 together this list. But as far as people that I 13:35:11
2 know I had instructed to onboard, those were the two
3 individuals.

4 Q. Are you aware of anyone in the ATG group
5 that uses a non-attributable device? 13:35:26

6 A. I'm not aware of anyone in the ATG group.

7 Q. Are you aware of the use of Wickr to
8 discuss any Waymo trade secrets?

9 A. I'm not aware of any use of Wickr to
10 discuss Waymo trade secrets. 13:35:57

11 Q. Are you aware of the use of
12 non-attributable devices to hide Waymo trade
13 secrets?

14 A. I'm not aware of any non-attributable
15 devices used to hide Waymo trade secrets. 13:36:14

16 MS. CHANG: No further questions.

17 MR. LYONS: I may have one or two follow-ups
18 maybe.

19 FURTHER EXAMINATION

20 BY MR. LYONS: 13:37:07

21 Q. When counsel was asking you some questions
22 a moment ago, she asked you, "Are you aware of the
23 use of non-attributable devices to hide Waymo trade
24 secrets?"

25 What did you understand the term 13:37:17

FEDERAL CERTIFICATE OF DEPOSITION OFFICER

I, ANRAE WIMBERLEY, CSR NO. 7778, do hereby
declare:

That, prior to being examined, the witness
named in the foregoing deposition was by me duly
sworn pursuant to Section 30(f)(1) of the Federal
Rules of Civil Procedure and the deposition is a
true record of the testimony given by the witness;

That said deposition was taken down by me in
shorthand at the time and place therein named and
thereafter reduced to text under my direction;

--X--- That the witness was requested to
review the transcript and make any changes to the
transcript as a result of that review pursuant to
Section 30(e) of the Federal Rules of Civil
Procedure;

----- No changes have been provided by the
witness during the period allowed;

----- The changes made by the witness are
appended to the transcript;

----- No request was made that the
transcript be reviewed pursuant to Section 30(e) of
the Federal Rules of Civil Procedure.

I further declare that I have no interest in
the event of the action.

I declare under penalty of perjury under the
laws of the United States of America that the
foregoing is true and correct.

WITNESS my hand this 26th day of December,
2017.



ANRAE WIMBERLEY, CSR NO. 7778